

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Waycross Division

In the matter of:

ALFRED C. DOWDY  
(Chapter 12 Case 587-00088)

Debtor

UNITED STATES OF AMERICA

Plaintiff

v.

ALFRED C. DOWDY

Defendant

Adversary Proceeding

Number 587-0026

FILED

at 3 O'clock & 07 min. PM

Date 9/23/88

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia PCB

ORDER

This matter is before this Court having been remanded by the United States District Court for further consideration of whether the government has proved a willful and malicious conversion by clear and convincing evidence. In its Order on Remand [United States of America v. Alfred C. Dowdy, CV 588-033 (S.D.Ga. July 21, 1988)], the District Court directed inquiry into whether this Court may have improperly shifted the

burden of proof to the Debtor. As the District Court stated:

"When a creditor makes a prima facie case of a willful and malicious conversion, a burden of production is imposed on the debtor. The debtor's burden is a slight one; he is merely required to present some evidence sufficient to create a question of fact. '[A]lthough the burden of going forward with the evidence may occasionally shift, the ultimate burden [the burden of persuasion] remains with the Plaintiff.' Matter of Dino, 17 B.R. 316, 319 (Bankr. M.D.Fla. 1982). And, the burden on the plaintiff is to prove his case by clear and convincing evidence."

District Court Order, at 8-9.

In my original decision, I stated that the burden of proof had shifted to the Debtor once Farmers Home Administration ("FmHA") made out a prima facie case. However inartful the language employed, it was intended to state that only the burden of production shifted to the Debtor and that the ultimate burden of proof remained with the Plaintiff to show that a willful and malicious conversion had occurred by clear and convincing evidence. Indeed the Phillips and Brown cases cited in my original order stand for the proposition that the burden of persuasion remains with the Plaintiff throughout. Obviously, however, the language of my prior order obfuscated my true conclusion.

From the evidence presented I find that the United States of America did prove by clear and convincing evidence that Dr. Dowdy intentionally and deliberately converted cattle pledged to the Farmers Home Administration, that he did so in knowing disregard of the rights of the Farmers Home Administration, which establishes both the "willful" and "malicious" tests of 11 U.S.C. Section 523(a)(6). See Chrysler Credit Corp. v. Rebhan, 842 F.2d 1257 (11th Cir. 1988). Despite the Debtor's testimony that he did not understand that he was required to inform FmHA of his cattle sales, and despite evidence that cattle sales are held routinely as a part of sound cattle farming, this Court is not convinced that Dr. Dowdy did not know of his duty to report sales and account for cattle to Farmers Home Administration. The evidence shows that Dr. Dowdy has been dealing with Farmers Home Administration at least since 1979. Dr. Dowdy has a Ph.D. degree in agricultural entomology and has no difficulty in reading and writing. In fact, Dr. Dowdy admitted reading the security agreement and being aware that his cattle were subject to a security lien. The express language of the security agreement set out in all capital letters immediately above his signature states as follows:

"SECURED PARTY HAS INFORMED DEBTOR THAT  
DISPOSAL OF THE PROPERTY COVERED BY THIS  
SECURITY AGREEMENT WITHOUT THE CONSENT OF

SECURED PARTY, OR MAKING ANY FALSE STATEMENT  
IN THIS SECURITY AGREEMENT OR ANY OTHER LOAN  
DOCUMENT, MAY CONSTITUTE A VIOLATION OF  
FEDERAL CRIMINAL LAW."

While Dr. Dowdy testified that FmHA knew of his cattle sales, there was no evidence of the agency acquiescing in those sales, or of its waiver of modification of the contractual language of paragraph "L" which states:

"Failure by the Secured Party to exercise any right--whether once or often--shall not be construed as a waiver of any covenant or condition or of the breach thereof. Such failure shall also not affect the exercise of such right without notice upon any subsequent breach of the same or any other covenant or condition."

Moreover, the FmHA county supervisor testified that the sales violated not only the terms of the security agreement but also the regular course of dealing between the parties. I found this evidence to be persuasive and entitled to greater weight than Debtor's generalizations. Accordingly, I conclude that there was no course of dealing which would serve to excuse the Debtor's actions.

Therefore, it is the conclusion of this Court that the government has shown by clear and convincing evidence that Dr. Dowdy willfully and maliciously converted cattle pledged

to Farmers Home Administration in violation of 11 U.S.C. Section 523(a)(6) and that portion of the debt Dr. Dowdy owes Farmers Home Administration is hereby found to be non-dischargeable in the amount of \$61,600.00.

Let judgment be entered accordingly.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 20<sup>th</sup> day of September, 1988.

FILED

at 3 O'clock & 07 min P.M.

9/23/88

# United States Bankruptcy Court

For the SOUTHERN District of GEORGIA

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

UNITED STATES OF AMERICA

Case No. 587-00088

Plaintiff

v.

ALFRED C. DOWDY

Defendant

Adversary Proceeding No. 587-0026

## JUDGMENT

☒ This proceeding having come on for trial or hearing before the court, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

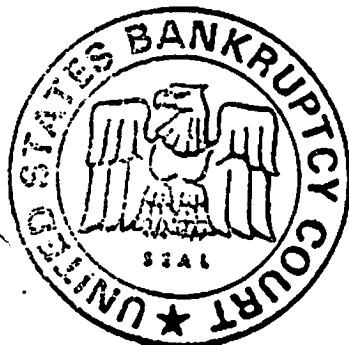
☐ This proceeding having come on for trial before the court and a jury, the Honorable , United States Bankruptcy Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable , United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

### IT IS ORDERED AND ADJUDGED:

That the Plaintiff, UNITED STATES OF AMERICA, shall recover of the Defendant, ALFRED C. DOWDY, the principal sum of Sixty-One Thousand Six Hundred Dollars and 00/100 Cents (\$61,600.00), together with interest at the rate of 8.32% from date until paid in full.



[Seal of the U.S. Bankruptcy Court]

Date of issuance: September 23, 1988

MARY C. BECTON

Clerk of Bankruptcy Court

*Patsy C. Burkhalter*  
Deputy Clerk

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